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Board Meeting – June 25, 2012

21st Floor – Conference Room 1

Present Board Members:

- Donald Lang, Chair (DL)
- Diane McLeod, Vice Chair (DM)
- Andrew Bedar, Member (AB)
- Mark Trivett, Member (MT)
- Myra Berloff, Massachusetts Office on Disability Designee (MB)

and

- Thomas Hopkins, Executive Director (TH)
- Kate Sutton, Program Coordinator/Clerk for Proceedings (KS)

Members Not Present:

- Gerald LeBlanc, Member (GL)
- Carol Steinberg, Member (CS)
- Walter White, Executive Office of Public Safety Designee (WW)
- Raymond Glazier, Executive Office on Elder Affairs Designee (RG)

1) **Incoming:** Powissett Lodge Building, 80 Carby St., Westwood (V12-160)

- TH
- EXHIBIT – variance application
 - seeking to open new building (one floor, with basement)
 - access will be provided after this season of the camp
 - proposing portable toilets for all
 - Phase 2 of the work will be toilet rooms and a kitchen
 - will provide accessible walkway, toilet rooms, and kitchen

DM - allow them to open for the summer, with the understanding that the toilet rooms, kitchen, and entrance will be done and accessible prior to the opening of the next summer session in 2013

AB - second –

*MB - only concern is that access board put in the middle, have to comply with other codes as well
- amend motion to say, on the condition that all other codes are comfortable with the use of the porta-potties, with sign-off*

DM - accept

AB - accept - carries

**** Carol Steinberg, Member (CS) – now present ****

Incoming: Met on Main, 38 Main St., Nantucket (V12-158)

TH - EXHIBIT – variance application
- spending over \$100,000.00
- propose sloped entrance and auto-opener at the entrance (1:12 slope)

CS - grant as proposed

MB - second – carries

2) Incoming: Sweet Peach Diner, 628 Trapelo Rd. Belmont (V12-176)

TH - EXHIBIT – Variance application
- service window height
- accessible toilet rooms and entrance at the rear
- will fix the handrails at the existing ramp
- service window is 46” and service self at 36” installed under the window
- over 30% so need variance for front entrance, lack of access

MB - where is the hostess to seat you?
- can you be seen from the rear entrance

CS - allow the temporary CO,

DM - Second – carries

CS - grant the lack of an accessible front entrance, on the condition that handrails are compliant at existing ramp and signage posted at the inaccessible entrance, and handrails added at the front entrance stairs, all done by August 1, 2012

DM - second –

CS - change to September 1, 2012

DM - second – carries

MB - grant lack of compliant clear width

MT - second – carries

DM - grant the service window height, on the condition that the shelf is installed as proposed, by September 1, 2012

CS - second – carries

4) Incoming: Wright Bldg, 281 State St., Springfield (V12-150)

TH - brought to the Board last meeting

- lift wasn't paid off seeking additional time to pay for the lift

- didn't send order yet, because talked to building inspector and found that the lift has been installed since 2009 and still lift not working because of lack of payment

- found that also need more variances for other areas

MB - notify building department that they have no authority to issue variances to 521 CMR, time or otherwise

CS - second – carries

MB - amend previous decision to allow until September 1, 2012 to get the lift paid for and inspected, or the second floor will be shut down

DM - second - carries

5) Incoming: Wright Bldg, 281 State St., Springfield (V12-150) – Cont'd

MB - have the Petitioners complete a survey of applicability of 521 CMR and submit variances or plans for compliance by August 1, 2012

MT - second – carries

CS - send decision to tenants as well

DM - second – carries

6) Discussion: Citizens Bank, 30 Brattle Street, Cambridge (V12-051)

TH - contract service agreement

DM - accept as submitted

AB - second – carries

TH - amend previous decision to state interior and exterior

DM - amend to state interior as well

MT - second – carries

DM - expedite the decision

AB - second – carries

7) Incoming: Coffee House, 501-505 Chestnut St., Gardner (V12-169)

TH - EXHIBIT – variance application
- existing, 80% of tenant fit out done
- sloped landing to the front entrance

DM - *re-pour the concrete at the front entrance, with no more than a slope of 1:12 and an auto-opener, as soon as possible, but no later than September 1, 2012 or the business will be closed on September 2, 2012*

CS - second – carries

CS - *issuance of temporary occupancy permit, conditional on the September 1, 2012 deadline*

DM - second – carries

8) Incoming: Dipper Café, 1367-1369 Purchase St., New Bedford (V12-155)

TH - EXHIBIT – variance application
- bar restaurant at first floor, apartments above
- spending over 30%
- seeking variance to 3.3.1b in the application, asking for relief from 25.1, for the front entrance
- also appears that bathrooms need a bit of relief

MB - *letter to the owner that we agree with building department the analysis of the spending analysis and the applicability of 521 CMR, that over 30% spent and need to comply with 521 CMR*

MT - second – carries

CS - *grant the variance for the front entrance, on the condition that they submit photograph of the accessible entrance for approval by the Board, by July 13, 2012*

DM - second - carries

DM - *in accordance with 248 CMR, need to have a partition and privacy screen at the toilet and urinal which will affect access, therefore required to submit plan for the partitions and access*

MB - *amend to state that plan shows two fixtures without a partition; therefore need to see plans for partitions*

DM - *approve the bathrooms as designed since they are usable, however if partitions are required by the plumbing code 248 CMR then need to review access requirements and bring it back to the access board, copy decision to the plumbing board and plumbing inspector*

CS - second – carries

9) Incoming: Office Building, 181 South Main St., Middleton (V12-041)

TH - previously heard and granted relief for the installation of a LULA

- letter from architect states that the cab dimension called out 69" x 54" in the notice of action
- actually providing 68" x 54", typo in application

CS - grant the modified dimensions

DM - second – carries

10) Discussion: DeLuca's Market, 7-17 Charles St., Boston (V11-232)

- TH -request for modification of order regarding the wine cellar
- email from Virgil Aiello on Friday, seeking to open the wine cellar now, without the installation of the computer and use a written catalog instead
 - seeking to hold off the installation of the catalog and the first floor station to allow the petitioners to install a LULA to the wine cellar

MB - the Board at the hearing granted their requests, therefore reaffirmed the decisions that were made at their request; Reaffirm the decision and deny the request

AB - second – carries

MB - at the time that DeLuca's submits documentation that they are installing a LULA, must be reviewed by the Board

MT - second - carries

DM - order a site visit for Georgiana's

MB - second – carries

11) Incoming Discussion: Six New Residential Condos, 37 P St., South Boston (V12-036)

- TH - follow-up to outstanding issues
- request to use vertical wheelchair lift, finally submitted dimensional plans for LULA

MB - grant as proposed, with the condition that it complies with 28.12.2 and no keys

DM - second - carries

12) Discussion: 154 Maverick St., East Boston (V10-180)

- TH - On October 1, 2010 received variance, denied variance for no access to the second floor
- hearing held on January 24, 2011, order issued
 - may 11, 2012, asked for 2 year extension to March of 2013 originally ordered
 - no variances had been sought from elevator board or plumbing board for other issues, as requested by the Board
 - Board denied extension request to 2015

MB - the Board once again reviewed your June 8, 2012 email, regarding your 2010 application and reaffirms the decision previously ordered by the Board; all the dates to request a hearing have long expired

DM - second –carries

13) Incoming: O'Hara's Restaurant, 1185 Walnut St., Newton Highlands (V12-174)

DM - as chair; DL not present

TH - seeking waiver of the 2 weeks time frame

GL - accept the waiver of the 2 week waiting period

MB - second – carries

TH - seeking 4 variances

- one is lack of level landing at new entry proposing; no more than 1:12, with auto-opener

MB - grant lack of level landing at the entrance on the condition as proposed, auto-opener and 1:12

MT - second – carries

TH - other entrance will have auto-opener, but will comply

- raised dining area, change in level

- proposing bathrooms at both levels, accessible unisex toilet room

MB - deny change in level

GL - second – carries

TH - 30.2, need variance for the location of unisex toilet room

AB - grant

CS - second – carries

TH - 30.7.1, lower two bathrooms, need variance for the dimensions

- 7'8" x 4' 10 ½"

MB - sink doesn't seem usable at lower toilet rooms

TH - seeking to do the work over the week of July 4th

AB - allow work to proceed, on the condition that plan for interior access, other than the kitchen ramp to be submitted by July 16, 2012.

DM - second – carries

14) Hearing: Sidewalk at Bacon Street, Waltham (C11-100)

DL - called to order at 11:00 a.m.

- introduce the Board

Luke Stanton, Assistant City Solicitor, City of Waltham (LS)

Stephen Golledge, City of Waltham (SG)

Stewart LaCrosse, City of Waltham (SL)

Wade Putnam, City of Waltham (WP)

DL - all but counsel sworn in

- EXHIBIT 1 – AAB1-13

TH - GL will recuse from the Board, but will submit testimony of the Complainant

GL - recusing from the vote

DL - swear in GL as complainant

GL - packet shows pictures of sidewalk

DL - AAB12

GL - statement made by the City of Waltham that there are no sidewalks in the location in question; sidewalks have been established since 1800's

- submittal of map from City of Waltham website, noting sidewalks, parcels and roads in the area in question

DL - map submitted by GL accepted as EXHIBIT 2

DL - where is the tree located on the map?

GL - at the corner, on the vertical

LS - WP researched the sidewalks, SG arborist for the City

WP - Exhibit 1, 1899 map shows no sidewalk and 41 foot wide street

- construction document to install sidewalk at the westerly side of Bacon Street

- Bacon Street side plans show westerly side sidewalk, tree in question is at the easterly side of Bacon Street

DL - EXHIBIT 3 – construction plans; retract as EXHIBIT 3, is present in AAB6

WP - no plans for sidewalk at easterly side

- 41 feet ends at the fence, if you measure the from the sidewalk at the other side

- layout has not changed since 1899

DL - pictures shows sidewalk?

LS - never laid out as a sidewalk by the City of Waltham

WP - City didn't construct sidewalk

- LS - public shade street law from 1800's cannot remove the tree since it is in public right of way
- WP - no curb in that location just gutter line
- GL - sidewalk is raised 3-4"
- WP - could be as much as 3", ramped up from the street
- City did not build the sidewalk, no petition to build sidewalk at this location
- CS - sidewalk shown on the submitted documentation
- LS - put together by the building department
- GL - City of Waltham website, notes sidewalk location
- DM - different color asphalt, not done at the same time
- DL - sidewalk was recently repaved
- GL - repaved within the last two years
- WP - no record of that with the City
- LS - not been paved in the last 2 years
- SL - not been repaved in the past 2 years, probably repaved 5 years ago or later
- sidewalk repaved, not the street
- LS - City of Waltham not saying that this is a sidewalk
- WP - concrete sidewalk across the street
- DM - curb cuts at the sidewalk at the other side
- WP - curb cut at the driveway, no curb cut at the intersection
- CS - closest curb cut on the easterly sidewalk
WP - closer to the school
- MB - looks like a sidewalk both before and after the tree, which is maintained and has been resurfaced
- isn't this a public right of way?
SL - yes
- if not a public right of way, someone would be running into the tree

- SL - have no knowledge of work done by the City to prevent people from driving near that tree
- MB - *based on visual photography, it is a sidewalk used by the public, find in favor of Complainant*
- CS - *second*
- DL - appreciate the argument that the sidewalk did not come into being in a traditional fashion, but the sidewalk is defined as a prepared walk within a street right of way
- two different colors of asphalt, intended for pedestrian use, since zone of the right of way
- CS - testimony that it was repaved, therefore work performed that was not in compliance

- *carries*
- CS - *City submit a plan for compliance or variance request regarding this location of the Bacon Street sidewalk,*
- LS - *been foregone from being allowed to introduce the rest of the evidence from those present; would like due to process*
- *not a legally recognized sidewalk*
- DL - *sidewalk is defined by the 521 CMR*
- *will allow testimony, but needs to be relevance*
- *withdraw motion to allow further testimony*
- DL - age of tree seems to be at least 100 years old, accept that the tree
- LS - City never laid out the sidewalk at the easterly sidewalk
- public shade tree law, shall not affect a private structure
- paving of a public street
- cannot alter shade tree laws
- DL - agency within the DPS
- what about slip and fall at that sidewalk
- this is about public safety
- TH - sent Mr. Dempsey down to print the Cambridge cases, where the importance of trees has been allowed as a variance
- MB - part of the variance process, can argue tree and alternate route
- not a denial of due process, simply stating that the area in question is a sidewalk, simply going to require a plan for compliance or a variance request to submit, and understand the tree issue
- simply need to determine if the area is a sidewalk
- secondary part of the process is the variance application, no due process denial
- GL - football and track, fireworks at the field to the right, sidewalk will be used to access that location
- been used for years as a sidewalk
- school across the street

MB - do people walk on this paved area?

SL - yes

LS - people park cars in the location as well as walk on the surface

MB - next step is to determine what to do with the tree, need to prepare next phase of the process argument, either a plan for compliance or variance request needs to be submitted

DL - other case regarding Cambridge sidewalk, shows that alternate routes allowed around an existing tree via a variance

CS - any further issue with due process?

LS - no, as long as the Board acknowledges that the tree is over 100 years old

- the Board does acknowledge that fact

CS - can the Petitioners submit a plan for compliance or variance request by August 1, 2012

MB - second;

- wondering if the Board could find out who improved the sidewalk, someone has to take ownership

- carries

DM - who has to maintain the sidewalk, what if gaping hole, who has to maintain

SL - the City would

MB - because regulations have been in effect since 1968, and at least 1975, regarding the sidewalk; would like to know when the area of sidewalk was improved, and find out when the sidewalk was laid out, have them submit, by August 1, 2012

DM - second – carries

MB - send out Board Staff to conduct a site visit to take photographs of the neighborhood in that location and sidewalk, to show if there are sidewalks and curb cuts present

CS - second

- would like to also know about the location of the sidewalk and surrounding areas, pertaining to substantial benefit

- carries

DM - expedite

MT - second – carries

*** Walter White, Executive Office of Public Safety Designee (WW) – now present ***

15) Hearing: The Sinclair, 50 Church Street, Cambridge (V12-055)

DL - called to order at 1 p.m.
- introduce the Board

Joshua Batti, Sinclair Cambridge (JB)
Michael Smith, Signature Architecture (MS)
Don Summerfield, Resident of Cambridge (DS)
Michael Muehe, Commissioner Cambridge Commission on Disability (MM)

DL - all sworn in
- EXHIBIT 1 – AAB1-29

JB - when originally came for the variance, two variances, seeking use of building elevators for vertical access; and the lack of access to the existing mezzanine
- freight elevator will be converted into passenger elevator to create access to the mezzanine
- still seeking a variance for the lack of access between the two floors

CS - *variance not required for the lack of access to the mezzanine, based on the testimony that the existing freight elevator will be converted to a passenger elevator*
DM - *second – carries*

JB - still seeking to use the main building elevators to create access between the two floors within the space
- met with MM three times to address the disability commissions concerns

MS - submittal of changes to the plan

DL - EXHIBIT 2 – revised set of plans

MS - currently a lift at the building exterior, directly adjacent to the stairs
- lift will be enclosed
- the other entrance into the building accesses the main building elevator lobby
- mezzanine is 30” above the second floor space, reason why elevator only accesses the mezzanine

JB - previous use was a brewery, so the mezzanine was existing, and the freight elevator was used to bring grains up to the fermentation tanks

CS - *amend previous motion to grant the variance to 521 CMR 29.2.3, on the condition that the freight elevator is converted to a passenger elevator, and clear path of travel to the elevator*
DM - *second – carries*

MS - if vertical access provided within the space
- permitted for 175 seats, only proposing 105 due to space constraints
- could not put in elevator, and lift would result in the loss of 12 seats
- no difference in seating in first and second floor, but there is an exterior patio at the second floor
- no advantage in terms of views or types of seating
- can go directly to the second floor, but first time visitors would not be aware of this
- otherwise if within the restaurant, would leave the restaurant, traveling 83 feet to the elevator from the restaurant side; 26 feet from venue space to elevators
- at second floor from restaurant to elevator 33 feet, from music venue is 18 feet
- bottom sections of the existing ramp at the 50 church street entrance comply, the upper sections do not comply

- JB - ramp study done by Disability Commission, submit measurements
- will address all of the areas of the ramp that are not in code
- DL - ramp survey studio – EXHIBIT 3
- MM - since the letter that was submitted on March 6, 2012, they have had 3 meetings
- have made a great deal of progress with this case
- ramp within the music venue there is an area of noncompliance that the Petitioners also intend to correct
- support the variance with the agreed to changes regarding the ramp at the 50 Church Street entrance, and the lift being covered at the 52 Church Street entrance
- hours of operation could be different, and it was important that entrances and elevator all available during hours of operation

DM - grant the variance to 28.1, based on the testimony of MM

MT - second

MB - is there a hostess station at the second floor?

JB - yes, near the stairs

- can the hostess see if someone comes in the second floor elevator lobby doors

JB - clear line of site to the entrance at the elevator lobby

- training manual for staff, have very clear written instruction and perhaps a notice at the hostess station

MS - could perhaps flip the stair so that the hostess station would be at the other side

JB - first concert venue and restaurant space in the state

- operate very tight venues, most well operated in the country

CS - question of maintenance of elevator

MM - upgrades to the elevator have been done to lock out the elevator for certain hours

JB - lease agreement with building owners, that the elevator will be available during hours that the business is open

DM - grant the variance to 28.1, based on the submitted testimony, on the conditions that the elevator is available during all operating hours for both the music venue and the restaurant, look into switching the stairs for an alternate hosting location at the second floor, and a submittal policy regarding second floor hostess stand

CS - second – carries

16) Incoming: O'Hara's Restaurant, 1185 Walnut Street, Newton Highlands (V12-174) – Cont'd

CS - motion to reopen

WW - second – carries with DM as chair

CS - would like to reconsider the denial of variance regarding the change in level, based on substantial benefit to persons with disabilities, same service at both levels

MB - bar at one level and not at the other

CS - not accessible seats at the bar, so service can be provided at either level

TH - there is accessible seating adjacent to the bar at that level

CS - the restaurant is currently not accessible; if the variance is denied than the project will not go forward

MB - are there two hostess stations?
TH - not sure if there are hostess stations

MB - willing to relook at this, but don't have all the answers

WW - no hostess station shown on the plan

CS - *rescind previous motion regarding the change in level within the space; grant the variance change in level 17.5, on the condition that the proposed ramp is built and kept clear at all times*

WW - *second – WW, CS, GL in favor; MB, MT and AB opposed, DM find in favor, so the motion carries*

17) Hearing: Founders Hall, Stebbins Hall, 21-31 Everett St., Cambridge (V12-062)

DL - call to order at 2 p.m.
- introduce the Board

Brooke Chea, Perry & Radford Architects (BC)
Oliver Radford, Perry & Radford Architects (OR)
Kevin Murphy, Lesley University (KM)
Michael Muehe, Cambridge Disability Commission (MM)
Sandy Durmaskin, Cambridge Disability Commission (SD)
Don Summerfield, Cambridge Disability Commission (DS)

DL - all sworn in
- EXHIBIT 1 – AAB1-13

OR - seeking time variance till 2014 for vertical access
- first floor is currently fully accessible
- ramp that leads to the first floor only accesses one door
- upper level requesting variance for the lack of access to the wood frame building
- wood frame building and brick building, connected
- time variance for the vertical access within the brick building, outright variance for the lack of access in the wood frame building
- project began in September of 2011, as the electrician got into the light fixtures, determined that it needed to be rewired, sprinklers also triggered
- sprinklers installed in the wood frame building and a time variance from the City of Cambridge to install sprinklers in the brick building in 3 years
- approximately \$100,000 for the installation of a LULA in the wood frame that would create access to an additional 2/3 of that building

MM - feel that there would be a substantial benefit to people with disabilities to visit the second and third floor of the wood frame building
- would support installing the LULA providing access to the second and third floors

SD - need access to the provost's office
- donors and students need to get to the president's office
- the ramp at the front of 29, does need to be reviewed, seems steeper than it should be
- access road in front of the ramp, was recently blocked when she went by

- DS - support colleagues' testimony
- MB - is there an auto-opener at the doors in question?
OR - yes, opens both doors at the same time
- MB - who is on the upper floors of the wood frame building
- OR - the first floor is where the president's office is, a large conf. rm. 2 staff offices, and a copy room
- second floor is the provost's office
- third floor is general counsel's office
- almost any meeting will be held at the conference room
- would be hard to put a policy in effect that would say staff only, so thought more prudent to request a variance request, so that if a member of the public did happen to go to the upper floors
- two offices at the first floor, one is assistant to the principle; kitchenette, toilet rooms and copy room at the first floor; one office at the first floor can be made available
- MB - could that be put into place in a policy for Lesley University that one of the first floor offices would be made available for a faculty member unable to access upper floor office space
KM - would be willing to put that in a written policy
- MB - historic stairs, need wall side handrails provided
KM - would be willing to provide wall side handrails
- CS - seeking variance for one inaccessible entrance?
OR - yes
- CS - what is the conference room used for on a day-to-day basis?
KM - meetings
- personnel at the upper floors are purely administrative, other than the provost office and general counsel, don't see the public that often
- admin is grant writers, general admin offices, generally paperwork
- OR - the second and third floor toilet rooms were renovated to be made accessible
- DM - perhaps fit LULA just between the first and second floor
- would like to see that looked into further
- DL - \$500,000.00 for a LULA for access to the 3 floors, and then intermediate levels within the second floor
- OR - 2nd floor currently has 3 different levels, steps into the offices
- would only get into a small portion of the 2nd floor
- MM - some access is better than none, partial access to the second floor and full access to the third floor
- either employee only areas or open to the public, not partially
- DL - very important building on the campus, that is one of the defining buildings on the campus
- may be a substantial benefit to the university over the long haul, notwithstanding costs
- is most of the university accessible
KM - approximately 1,000,000 gross sq. feet, sear building represents 25% of that (fully accessible), two new dorms recently built and fully accessible; other dorms renovated and made accessible at the first floor; at least 50% accessible, and increasing the access every year

WW - \$500,000.00 for access to the second and third floors
- spending \$1.25 million on the project as a whole
- spending \$500,000.00 when so many other ways to accommodate people, seems excessive cost without substantial benefit to persons with disabilities
- going to bring sprinklers into the brick building and proposing elevator into brick building

GL - are the auto-door openers installed?
OR - yes

DM - part of the trouble is that it is such a significant building, where the president is located
- says a lot if you can't access the upper offices are located

WW - excessive cost without substantial benefit to persons with disabilities

MM - purpose of the board is to ensure access for persons with disabilities
- \$500,000.00 estimate, could be less or more; less than 50% of the \$1.25 million being spent
- spending over 30% of the assessed value of the building

WW - expressed view as one member of the board

MM - board interprets their regulation
- valid viewpoint

MB - excessive cost without substantial benefit to persons with disabilities

CS - substantial benefit needs to take a lot of things into consideration
- faculty offices elsewhere that are accessible; and the availability of a conference room

KM - no faculty offices within this building
- other faculty offices in other locations, some that are accessible and some that are not

DL - need to send digital copies of the pictures for the file

CS - are there other buildings with historic significance that are accessible

KM - no

CS - grant the variance for 25.1, regarding the existing inaccessible entrance, based on the condition that accessible entrance

DM - second - carried

MM - not checked as historic on the application, so can't

CS - grant a time variance for the lack of full compliance within the brick building until December 31, 2014

DM - second – carries

CS - progress reports on status of brick building access project, every six months, beginning January 1, 2013

DM - second – carries

CS - continue on the vertical access within the wood frame building, more information about interior (pictures), layout of the other parts of the campus (overview of campus access as a part of determining substantial benefit), more details about cost estimates, more information about kinds of offices, submitted by August 1, 2012

DM - second – carries

18) Incoming: O'Hara's Restaurant, 1185 Walnut Street, Newton Highlands (V12-174) – Cont'd

WW - reopen

AB - second – carries

DM - would like to have for this use only

WW - for this use only

AB - second – carries with MT and MB opposed

*** No More DM, CS, and MB ***

19) Hearing: Boost Fitness, 79 West Main Street, Northboro (V12-65)

DL - called to order at 3 p.m.

- introduce the Board

Tom Galvin (TG), JD Lagrasse and Associates, Inc.

Mark Federico (MF), President Boost Fitness

DL - both sworn in

- EXHIBIT 1 – AAB1-26

TG - updated plans

DL - send digital version of said plans

TG - Boost Fitness is in Building B

- meant to be 1-2,000 sq. ft. tenant spaces

- 7200 square feet for the whole building

- lease is for first and second floor

- proposing to use second floor as additional fitness use

- would like to have overflow spin classes, and would like to use the second floor as stretching as well

- one staircase up to the second floor

- Building A will be a restaurant, second floor of Building A will be back of house offices

- Second floor is smaller portion of first floor

- same services offered at both floors

- passenger elevator would take up significant space and cost \$80,000.

- LULA would take up less space, but still a significant amount, and cost \$52,000

- incline lift on the stairs, 48 inches for platform, stairs are only 44", would have to reframe stairs, \$39,000 for the equipment, not including structure costs

DL - did you look at vertical wheelchair lift?

TG - no

- GL - basement?
TG - no
- MT - only concern is more bikes at second floor
MF - bikes at both floors, overflow space
- won't get used in less use months
- classes at both floors
- MT - don't want to see second floor being only spin class location
TG - larger spin class is at floor
- AB - during winter months more use of both floors?
MF - January, February, March are busiest months
- TG - from parking lot, the entrance is at grade
- street side there are steps
- parking lot entrance is the main entrance to the building
- TH - new construction
- street side entrances need variances
- DL - square footage?
TG - 7200 at first floor, 980 at second floor
- WW - *grant the variance for the lack of vertical access to the second floor, based on proven that excessive cost without substantial benefit*
GL - *second - for this use only and recorded with the registry*
WW - *accept*
- *carries*
- TG - architect for both buildings, didn't think that they would be used
DL - all entrances required to comply
- TH - need amended variance request or plan for compliance
- DL - platform in the orange space
MF - temporary structure used by the instructors for some classes
- folds up when not in use
- AB - *no variance needed for the platform since employee-only use*
MT - *second – carries*
- AB - *contact the building department regarding the lack of enforcement at the 6 stair entrances*
MT - *second – carries*
- WW - *allow the owner of the buildings until August 1, 2012 to modify the variance to address the six entrances that are not accessible*
MT - *second – carries*

TH - EXHIBIT – variance application
- seeking variance to 25.1 for front entrance, ramp at the back of the building where the parking is located
- unisex accessible toilet provided within the building
- both entrances enter same location

WW - *grant 25.1, on the condition that door hardware at the top of the ramp complies, accessible parking complies, and ramp handrails*

GL - *second - carries*

21) Incoming: The Cru Restaurant, 1 Straight Wharf, Nantucket (V12-168)

TH - EXHIBIT – variance application
- one-story seasonal restaurant with 90 seats
- spending over 30%
- seeking variance to 17.5, for change in level at the rear of the restaurant
- 24.5 for the lack of handrails at an interior ramp
- disability commission propose to put grab bars at the entrance

MT - *grant the variance for the lack of handrails (24.5) on the condition that grab bars placed at the doorway*

WW - *second – carries*

TH - noncompliant head height at change in level to third dining level, with one step

WW - *grant on the condition that they look at the route from the sliding doors*

GL - *second – carries*

22) Incoming: Regal Condominiums, 235 Winthrop St., Medford (V12-166)

TH - EXHIBIT - variance application
- reconstruction of existing stairs
- two entrances at west and east side that are accessible

WW - *grant*

GL - *second – carries*

23) Incoming: Mixed Use Building, 301 Newbury St., Boston (V12-161); Mixed Use Building, 299 Newbury St., Boston (V12-159)

TH - EXHIBIT - variance application
- typical dig out the front yard with entrance space
- common lobby
- they need vertical access to the retail above
- Commission objects to the variance

WW - *motion for hearing on both*

GL - *second - carries*

24) Incoming: Cross Slope of Multiple Curb Cuts, Winter Street Bridge Over the CSX and MBTA Railroad, Fountain and Winter Street, Framingham (V12-151)

- TH - EXHIBIT – variance application
- slopes of bridge effect 6 curb cuts and 1 driveway
- project will replace sidewalks within the limits of the reconstruction work
- proposing staged construction to allow use of existing sidewalk until new sidewalk can be completed
- 6 curb cuts and 1 driveway (22.1 and 21.1)
- 6% and 7.5% for landings

MT - grant as proposed based on tech. infeasibility

WW - second – carries

25) Incoming: Used Car Sales Bldg, 520 College Hwy, Southwick (C09-124 & V12-167)

- TH - originally came to the board as a complaint
- EXHIBIT – variance application
- added garage onto the building
- ramped entrance into the office
- 1,000 square foot building
- complainant complained about the landing at the entrance landing

MT - grant entrance location

AB - second – carries

26) Incoming: Asylum Fitness, 280 Wilbraham St., Monson (C10-070 and V12-163)

- TH - complainant filed two complaints, no curb cuts at the head of the access aisle
- central entrance
- accessible parking at either side of the entrance
- built up ramp into the entrance, no curb cuts at the head of the access aisle

WW - grant

MT - second – carries

- TH - second request relative to the service counter
- rubber mat at counter
- separate location desks, in lieu of making the main desk comply
- service counter is about 42”

WW - deny

MT - second – carries

27) Hearing: Bandcroft Commons, 50 Franklin St., Worcester (C11-040)

- DL - called to order at 4 p.m
- introduce the Board

Mark Dempsey, Compliance Officer for the Board (MD)

Ross Pytko, Mayo Group (RP)

Michael Carano, Mayo Group (MC)

Paul Keyes, Mass. Elevator Inspector Supervisor (PK)

George Ramian, Mass. Elevator Inspector (GR)

- DL - all sworn in
- EXHIBIT 1 – AAB1-28
- TH - complainant is Walter Zalinsky
PK - been promoted since this was filed, GR take over this case
- MD - sent out a first notice in June of 2011 regarding the vertical wheelchair lift that was not operational
- stipulated order issued for September 1, 2011
- on September 26, 2011 received plans for compliance
- complaint now regarding maintenance of the elevators, since only 1 of the 3 working, received today
- DL - EXHIBIT 2, new complaint
- MD - received email from elevator Board correspondence regarding the lack of access at this elevator
- lift is still not in operation
- hoping the owner has information to be submitted
- GR - lift at the exterior
- first notified to go to the site on April 3, 2012; the lift was removed at that visit
- were told that they were under renovation at the time
- looked into the elevator equipment, doors were swinging into hoistway, paper sign and caution tape across the open hoistway; safety issue for elevators
- placarded 3 elevators on site at April 3, 2012, one for the doors, one for an elevator in another part of the establishment that was not inspected for years, one for motor issues
- was there on the 15th of June
- tentative inspection at the 28th of June; nothing on file with the department for an inspection
- not sure what they are doing regarding maintaining the equipment, and at least keeping the existing elevator running
- TH - need the lift to get to the level that the elevators are at
GR - yes
- PK - getting daily complaints to Elevator Board from the tenants, elevator breaks down daily
- written statement that building management removed placard from the elevators to give tour to potential tenants, illegal
- DL - EXHIBIT 3 – written testimony from tenant
- GR - put the elevator at the bottom floor and turned it off
- should have stopped it at the 4th floor and barricade the 6th floor
- piece of cardboard holding relays so that they don't short out
- DL - pictures of elevator from elevator inspector as EXHIBIT 4
- RP - here for wheelchair access, not regarding elevator access
- have received information that elevator has been fixed and that there is a scheduled inspection
- rehab of an interior block in Worcester
- in that process they have had multiple commercial tenants that directly impact that lift
- lift has been purchased, a lot of the work was done at the space
- and also put together plans to make sure that the building is accessible
- would like to seek an additional 60 days to have the wheelchair lift and functioning

- RG - incline lift was there
- DL - don't they need a variance if incline lift removed and incline lift proposed
MC - vertical wheelchair lift proposed
- TH - no, installation of vertical wheelchair lift is allowed by right
- extended time to make the vertical wheelchair lift
- residential tenants above the commercial spaces
- not a proactive approach for access
- RP - requested extension and hadn't heard back
- understand the fact that need plan in place for access in the interim
- DL - lift was removed
RP - since September of last year
- GL - *find in favor of the complainant*
WW - *second – carries*
- RP - could have the lift operating within 45 days
DL - including inspections required
MC - yes
- Keystone Elevator is installing the lift
- permit for the lift is supposedly in the hands of Keystone elevator
- TH - what is the Boarding on the lift
- straight on and off?
MC - yes
- GR - why was old lift removed?
RP - not sure, understood that it was still functional and they were trying to rehab the space
- TH - needed to apply for the removal of the incline lift from the Board
KS - and from the elevator board as well
GR - yes decommission required
- PK - GR was at the site when the placard was reportedly removed; statement was by tenant that leasing agent removed the placard
GR - did observe that the placards were taped back up to the doors, was told that they were removed for painting, but did not observe any new paint
- DL - accept pictures as part of the pictures
- Elevator Board can enforce the elevator issues
- TH - even if lift installed, still need elevators
- are these elevators in need of refurbishment
- GR - working on elevators in this building since 1988, they were old in 1988
- TH - 521 CMR 2.6 maintenance of accessible features, elevator access is part of that

- RP - there is a working elevator, but there are 2 that may need some repair
- have hired Keystone Elevator to fix these elevators
- PK - incorrect about one remaining elevator running elevator, the one that is running has been breaking down weekly
- DL - ten story building?
MC - 16 apartments on each floor
- 2-300 people living in the building, this is an important issue
- GR - do have a picture of the elevator that is running
- expiration for that certificate is 1/12/11
- TH - no scheduled inspection for the elevator
- GR - out of inspection for over a year, if no money present then can't apply or receive a permit from the state and would require that further elevators shut down
- GL - *vertical wheelchair lift shall be available for use, inspected and in working order in 45 days*
WW - *second – carries*
- WW - *find in favor of the complainant regarding the lack of maintenance of accessible features at the elevators*
MT - *second – carries*
- RP - state objection to lack of notice regarding the most recent complaint filed
- TH - MD will send first notice tomorrow regarding the maintenance of the elevators cited in the most recent complaint
- unacceptable that this is a life safety issue regarding the doors, since potential for death in falling into the elevator shaft at these shaft doors that were not blocked.

28) Advisory Opinion: Berkshire Bank, 99 North St., Pittsfield

- TH - open bank corrals
- height of the white counter is compliant and there is knee space
- WW - knee space

WW - *doesn't comply, therefore modify the depth of the shelf to allow for a forward approach and resubmit plans and pictures*
MT - *second - carries*

29) Incoming: Two Curb Cut Locations, High and Pleasant St., and Lincoln and Craig St., Spencer (V12-164)

- TH - EXHIBIT – variance application
- all curb cuts will be concrete construction
- slope at curb cut at high street will have 17%

WW - *grant at high street*
GL - *second – carries*

TH - Lincoln and Craig St. 16% running slope

WW - *grant at Lincoln and Craig*

GL - *second – carries*

30) Discussion: Decisions and Minutes 6/18/12

AB - *accept on the condition that wood infill added to sliding doors*

GL - *second – carries*

31) Incoming: Dollar Tree Store, 1011 Water St., Fitchburg (C11-134 & V12-165)

TH - complainant cited 23.3.1, accessible parking not closest to accessible entrance and not van accessible
- owner proposes to fix van accessible signage, already done
- also plan submitted to move the parking

MT - *require closer proximity parking and that if need variance for slope submit amended variance*

WW - *second – carries*

32) Incoming: Curb Cuts at 2 intersections, Hamden and Dwight at Chestnut St., Holyoke (V12-144)

TH - EXHIBIT – variance application
- restoration of Veteran's Park
- petitioner seeks variances on cross slopes at 5 curb cut locations
- spending \$1.2 million
- Ramp #5, 2.7% and 1.7%

WW - *grant*

MT - *second – carries*

TH - Ramp #7, 4.1%

WW - *grant*

GL - *second – carries*

WW - *grant Ramp #4*

MT - *second – carries*

AB - *grant Ramp #5*

WW - *second – carries*

WW - *grant Ramp #3*

GL - *second - carries*

33) Incoming: Westminster Village Apartments, 1307 Pawtucket Blvd., Lowell (V12-156)

TH - EXHIBIT – variance application
- remodeling residential buildings
- 36 buildings with 432 total units
- spending over 30% of the assessed value
- required to provide Group 2A units

WW - order that the architect and code consultant meet with TH
GL - second – carries

34) Incoming: Residential Building, 115 Mt. Auburn St., Cambridge (V12-170)

TH - EXHIBIT – variance application
- intend to provide 2 Group 2A units, but can't get an entrance into the building
- central entrance up 3 steps and then another 6 steps up at the interior

MT - grant
AB - second – carries

TH - elevator cab size, 41" x 48"

AB - grant
WW - second – carries

- End of Meeting -